

REMARKS/ARGUMENTS

Please reconsider the present application in view of the following remarks in response to the Office Action dated August 13, 2003. Claims 2-11 and 13-20 are pending in the present application. No amendment is made in the present response.

Specification

The Examiner stated that the substitute specification filed 6/25/03 was not entered because the statement as to a lack of new matter under 37 CFR 1.125(b) was missing. This previously substituted specification was presented, as the Examiner suggested, in a clearly printed form and better format. Applicants hereby stated that there was no new matter involved in the previously substituted specification. It is respectfully requested that the substituted specification be entered.

Claim Rejections under 35 U.S.C. 103

The Examiner sustained the rejection of claims 2-11 and 13-20 under 35 U.S.C. 103(a) as being unpatentable over Vyshkina '965 in view of EP0072214, EP0072213 and further in view of newly cited references Torres et al., Nille, and Mayfield. Applicants respectfully traverse.

First of all, the newly cited Torres et al. reference (Soil Use and Management, Vol. 14, pages 106-110, 1998) was published on June 1998, which is evidenced by the Exhibit attached herein. As previously acknowledged by the Examiner, the foreign priority date of the present invention is March 26, 1998, while the PCT filing date is March 24, 1999. Since Torres et al. reference was published later than the critical date of the present application, i.e. March 26, 1998, it is not prior art to the present invention.

As to the other two newly cited references Nille, and Mayfield, the Examiner merely used them to show that remediation of soils contaminated with heavy metals where plants grow were

already known. The technical solution disclosed in these two references is substantially different from that of the present invention.

With regard to the remaining references, which were already cited in the previous Office Action, we remain of the same opinion as our response dated June 20, 2003.

Specifically, we would like to further restate that the polyacrylamide used in Vyshkina as a flocculant is not interchangeable to the crosslinked polyacrylamide used in the water retentive polymeric compositions of EP 0072213 and EP 0072214.

As we explained previously, polyacrylamide is water soluble, which is desirable when it is used in a solution as an anionic flocculant as disclosed in Vyshkina. The previously enclosed reference Ullmann's Encyclopedia of Industrial Chemistry, Vol. A 28, P. 57 provided evidence of this. On page 59 the enclosed reference discloses that flocculants are high molecular mass water-soluble polymers and are dosed in the form of a solution. On the other hand, crosslinked polyacrylamide is not water soluble, or is much less soluble than polyacrylamide, and possesses good water retention and absorption ability, which is desirable when it is used as a plant growing media additive as described in EP 0072214 (see page 2, lines 22-33).

Hence, the polyacrylamide in Vyshkina and crosslinked polyacrylamide in EP 0072214 are used for completely different purposes. Polyacrylamide and crosslinked polyacrylamide are not interchangeable with each other. Specifically, because of its lower water solubility, the crosslinked polyacrylamide cannot be formed into a solution as easily as the noncrosslinked polyacrylamide. Hence, the crosslinked polyacrylamide cannot be used, or at least cannot be used as well as non-crosslinked polyacrylamide, as an anionic flocculant as disclosed in Vyshkina. On the other hand, because of its water soluble property, the non-crosslinked polyacrylamide can not be used, or at least can not be used as well, as crosslinked polyacrylamide, as a plant growing media additive as disclosed in EP0072214, and thereby is not suitable as a plant growing media additive.

As clearly stated in MPEP 2143.01, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984).

For at least the foregoing reasons, claim 13 of the present invention is not obvious under 35 U.S.C. § 103(a) over Vyshkina in view of EP 0072214 and EP 0072213, and further in view of the newly cited references Nille, and Mayfield. For at least the same reasons, the remaining pending claims 2-11, 14-16 and 18-20, depending from claim 13, are not obvious under 35 U.S.C. § 103(a) over the cited references. Withdrawal of the obviousness rejection of claims 2-11, 13-16 and 18-20 under 35 U.S.C. 103(a) is respectfully requested.

It is believed that no fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,
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